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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 FRANK FOSTER, PHILLIP WAMOCK,
individually, on behalf of all others
21 similarly situated, and on behalf of the
general public,

22 Plaintiffs,

23 v.

24 NATIONWIDE MUTUAL INSURANCE
COMPANY,

25 Defendant.
26
27
28

Case No. C3:07-CV-4928 SI

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO TRANSFER VENUE
PURSUANT TO 28 U.S.C. § 1404(a);
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF.**

Date: November 30, 2007
Time: 9:00 a.m.
Court: 10

Before the Honorable Susan Illston

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NOTICE OF MOTION TO TRANSFER VENUE

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Nationwide Mutual Insurance Company ("Nationwide" or the "Company") will and hereby does move to transfer this action to the Southern District of Ohio, Eastern Division. Hearing on this Motion to Transfer Venue will be held at 9:00 a.m. on November 30, 2007 in Courtroom 10 of the Honorable Susan Illston, District Judge, located at 450 Golden Gate Avenue, San Francisco, California.

This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Teresa Wiencek and Richard H. Rahm, all pleadings and papers on file in this litigation, and upon such other matters as may be presented to the Court at the time of the hearing.

RELIEF REQUESTED

Nationwide moves the Court, pursuant to 28 U.S.C. section 1404(a), to transfer this action based on the convenience of witnesses and parties and the interests of justice from this district to the Southern District of Ohio, Eastern Division, located in Columbus, Ohio.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nationwide is a national insurance company headquartered in Columbus, Ohio. Although Nationwide has Special Investigators located in thirty-eight states, almost a third of its Special Investigators are located in either Ohio or states bordering Ohio or New York, and about three-fourths of the investigators are located in the Eastern United States. Only ten percent of its Special Investigators are located in California. Nevertheless, Plaintiff Frank Foster ("Foster"), an Special Investigator for Nationwide located in California, and Plaintiff Phillip Wamock ("Wamock"), a former Special Investigator located in Arkansas, have filed a purported class and collective action in the Northern District of California. They allege that they were improperly classified as exempt from the overtime requirements in the Fair Labor Standards Act ("FLSA") and, with respect to Foster, California law. Wamock seeks to represent a national collective class of approximately 355 Special Investigators with respect to the alleged FLSA violations, ninety percent

1 of whom live outside of California. In addition, Foster seeks to represent a sub-class of
 2 approximately 36 California employees with respect to various alleged California wage-and-hour
 3 violations.

4 Nationwide brings this motion to transfer venue from the Northern District of
 5 California to the Southern District of Ohio, pursuant to 28 U.S.C. section 1404(a), based on the
 6 "convenience of the parties and witnesses" and "in the interests of justice." Specifically, Nationwide
 7 seeks to transfer this purported class action based on the following grounds:

8 **The Southern District Of Ohio Is A Proper Venue.** Transfer is appropriate to any
 9 district where the action could have been filed. *See* 28 U.S.C. § 1404(a). Because Nationwide
 10 maintains its corporate headquarters in the Southern District of Ohio, it is subject to personal
 11 jurisdiction in that district.

12 **Convenience Of The Parties And Witnesses And Interests Of Justice.** Transfer to
 13 the Southern District of Ohio would be convenient for the parties and witnesses and in the interests
 14 of justice because (1) it is closer to both Nationwide, one of the two named plaintiffs and a majority
 15 of the putative class members; (2) it is closer to most of the potential witnesses in the action; (3) it is
 16 closer to the location of the evidence; (4) it is equally familiar with wage and hour law; (5) it has a
 17 less crowded docket; and (5) Ohio has a greater local interest in the action.

18 In contrast, the Northern District of California has practically no connection with this
 19 action and is nothing more than blatant forum shopping, which should be accorded no weight
 20 whatsoever. *See Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48, 54, n. 12 (D. DC 2000).
 21 Accordingly, this action should be transferred to the Southern District of Ohio.

22 **II. STATEMENT OF RELEVANT FACTS**

23 **A. Nationwide Is An Ohio Corporation Located In The Southern District Of Ohio, 24 Where Most Of The Evidence And Putative Class Members Reside.**

25 Nationwide is a national property and casualty insurance company that offers a full
 26 range of products to protect its customers' homes, automobiles, and business property. (Declaration
 27 of Teresa Wiencek ["Wiencek Decl."] ¶ 3, attached to the Declaration of Richard H. Rahm ["Rahm
 28 Decl."], Exh. A). As noted above, Foster is a current Nationwide employee, who works as a Senior

1 Special Investigator in California, and Wamock is a former Nationwide employee, who worked as a
 2 Special Investigator II in California from 1999 to 2003 and then in Arkansas from approximately
 3 2003 through 2007. (Complaint ¶¶ 5-6).

4 In their Complaint, Plaintiffs purport to bring a collective action pursuant to 29
 5 U.S.C. § 216(b) on behalf of all current and former Nationwide Special Investigators¹ across the
 6 country. (Complaint ¶¶ 1, 2). In addition, they likewise bring this case as a class action pursuant to
 7 Federal Rule of Civil Procedure 23, purporting to represent a class of Nationwide Special
 8 Investigators who have worked in California during the past four years. Plaintiffs specifically allege
 9 that Nationwide violated the Fair Labor Standards Act ("FLSA") and the California Labor Code by
 10 failing to pay overtime compensation for hours worked in excess of forty per week. (Complaint
 11 ¶¶ 2, 4). They further allege that Nationwide failed to "provide and authorize meal and rest periods,
 12 to pay waiting time penalties, and maintain accurate records" in violation of California law.
 13 (Complaint ¶¶ 3, 4). As Plaintiffs note in their Complaint, it is Nationwide's position that Special
 14 Investigators are exempt from these provisions of the FLSA and California Labor Code. (Complaint
 15 ¶¶ 2, 3). Nationwide, therefore, denies that it has failed to compensate its Special Investigators in
 16 accordance with the law.

17 Nationwide operates throughout the country, and over the past four years, it has, to
 18 the best of its knowledge, employed 355 Special Investigators in thirty-eight states. Specifically, it
 19 has employed the following numbers of Special Investigators in the following states: Alabama (8),
 20 Arkansas (4), Arizona (9), California (36), Colorado (3), Connecticut (7), Delaware (4), Florida (32),
 21 Georgia (7), Iowa (9), Illinois (3), Indiana (5), Kansas (1), Kentucky (3), Maryland (18), Michigan
 22 (13), Minnesota (3), Missouri (2), Mississippi (5), North Carolina (19), Nebraska (3), New
 23 Hampshire (1), New Jersey (1), Nevada (4), New York (28), Ohio (24), Oregon (4), Pennsylvania
 24 (28), Rhode Island (3), South Carolina (8), Tennessee (9), Texas (19), Utah (2), Virginia (19),
 25 Vermont (1), Washington (4), Wisconsin (1) and West Virginia (5). (Wiencek Decl. ¶ 4). Of these

26
 27 ¹ In their Complaint, Plaintiffs specifically reference particular classifications of Special Investigators, such as
 28 "Special Investigator," "Senior Special Investigator," "Special Investigator I," "Special Investigator II," and "Special
 Investigator III." (Complaint ¶ 2). For purposes of this Motion, Nationwide refers to these generally as "Special
 Investigators."

355 Special Investigators, 76% worked in Eastern states – clearly closer to Ohio than to California. (*Id.*). One hundred six of the Special Investigators were employed in Ohio, states bordering Ohio and New York. Notably, only thirty-six, or approximately 10%, of Nationwide's Special Investigators worked in California. (*Id.*).

Nationwide's corporate headquarters is in Columbus, Ohio, and its general human resources and pay policies and practices are developed and maintained by management and executive-level employees who work from that office. (Wiencek Decl. ¶¶ 3, 5). Payroll records are processed and kept at Nationwide's corporate office, and associate pay is prepared and distributed from there as well. (Wiencek Decl. ¶ 6). Likewise, documents related to the duties and responsibilities of Special Investigators, such as their job descriptions, training materials, the Nationwide policies that Special Investigators are charged with enforcing, and documents supporting their exempt status were also generated in Ohio and are maintained at Nationwide's corporate headquarters. (Wiencek Decl. ¶ 7).²

B. Most Of The Potential Witnesses Reside Closer To The Southern District Of Ohio Than The Northern District Of California.

The witnesses whom Nationwide is likely to call to testify in this matter include a number of management and executive-level Nationwide employees, who work out of corporate headquarters in Columbus:

NAME	TITLE	SUBJECT MATTER
Teresa Wiencek	Vice President of Human Resources	Duties, responsibilities, and reporting structure for Special Investigators; procedures related to human resources and the processing of payroll, the location of personnel and payroll records; identities of individuals with specific knowledge regarding Nationwide's policies and procedures; exempt classification for Special Investigators

² Although these documents are relevant to this action, Nationwide does not intend to suggest that it can properly raise its defense that Special Investigators are exempt from the overtime provisions of the FLSA and the California Labor Code without an individualized, fact-specific inquiry into the actual day-to-day duties and responsibilities of each Special Investigator.

Kevin Hilyard ³	Vice President of Claims (including responsibility for Special Investigation Unit)	Special Investigator duties and responsibilities
Lee S. Herman	Special Investigation Unit Officer	Special Investigator duties and responsibilities; development of training materials for Special Investigators; policies that Special Investigators are charged with enforcing
Janelle Mikusa	Human Resource Director	Duties, responsibilities and reporting structure for Special investigators; review of Special Investigator job titles; exempt classification for Special Investigators
Peter Hendey	Officer of Associate Relations	General human resources and pay policies; compensation-related complaints by Special Investigators
Bradley Gutcher	SIU Director	Special Investigator duties and responsibilities; review of Special Investigator job titles; training provided to Special Investigators
Richard Gandarillas	Compensation Director	Pay bands, market reference value, and job description for Special Investigators; review of Special Investigator job titles; exempt classification for Special Investigators

(Wiencek Decl. ¶ 8). Other Company witnesses whom Nationwide may call to testify in this matter include the following Nationwide employees who do not work at the corporate headquarters in Columbus, but who work much nearer to Columbus than to San Francisco:

NAME and LOCATION	TITLE	SUBJECT MATTER
Ray Albertini (Cleveland, OH)	Former Head of Special Investigation Unit	Special Investigator Duties and Responsibilities; development of training materials for Special Investigators; policies that Special Investigators are charged with enforcing
Amy Spellman (Des Moines, IA)	HR Specialist	Special Investigator duties and responsibilities; review of Special Investigator job titles; exempt classification for Special Investigators

³ Mr. Hilyard is currently transitioning from New York to Columbus and is expected to be situated in Columbus long before his testimony is required.

1 2 3 4	John Cordes (Des Moines, IA)	Compensation Consultant	Pay bands, market reference value, and job description for Special Investigators; review of Special Investigator job titles; exempt classification for Special Investigators
5 6 7	Wade Wickre (Gainesville, FL)	SIU Director	Duties, responsibilities, and reporting structure for Special Investigators; policies that Special Investigators are charged with enforcing

8 (Wiencek Decl. ¶ 9).

9 If trial of this matter is held in San Francisco, the Columbus witnesses would have to
10 travel approximately 2,500 miles each way. (Mapquest Directions from Columbus to San Francisco,
11 Rahm Decl., Exh. B). Each way, this would take approximately thirty-five hours by car (*Id.*), or
12 nearly a full work day of air travel, given the lack of direct flights between Columbus and San
13 Francisco. (<http://www.port-columbus.com/flight/flight/non-stop.asp>, Rahm Decl., Exh. C). There
14 are likewise no direct flights to San Francisco from Des Moines, Iowa, where two other Company
15 witnesses reside. (http://www.dsmaairport.com/Travel_Info/Non_Stop_Airlines.htm, Rahm Decl.,
16 Exh. D). Thus, they, too, would have to spend nearly a full work day traveling by air from Des
17 Moines to San Francisco, or spend approximately twenty-five hours making this 1,800 mile trip by
18 car. (Mapquest Directions from Des Moines to San Francisco, Rahm Decl., Exh. E). The only
19 Nationwide witness who could travel from his place of residence, Cleveland, Ohio, to San Francisco
20 on a direct flight is Ray Albertini. Still, this 2,500 mile trip takes approximately five hours by plane.
21 (Mapquest Directions from Cleveland to San Francisco; Continental.com Flight Information from
22 Cleveland to San Francisco, Rahm Decl., Exhs. F-G). If, on the other, hand, the Court grants this
23 motion to transfer and trial is held in the Southern District of Ohio, Eastern Division, there would be
24 no travel required for the Columbus witnesses, and Ray Albertini could likely drive the
25 approximately two and a half hours between Cleveland and Columbus. (Wiencek Decl. ¶ 10;
26 Mapquest Directions from Cleveland to Columbus, Rahm Decl., Exh. H). The Des Moines
27 witnesses could travel to Columbus on Nationwide's regular air shuttle between Des Moines and
28 Columbus. (Wiencek Decl. ¶ 10).

Furthermore, attendance at hearings and a lengthy trial in San Francisco will require these key witnesses to be away from their work and homes, which would substantially disrupt Nationwide's business operations and the personal schedules of the witnesses. (Wiencek Decl. ¶ 11). Moreover, because these likely witnesses hold key responsibilities for the operation of the Company, scheduling time away from work would be difficult because their responsibilities would have to be delegated to others, or simply not performed at all. (*Id.*). It would reduce the disruption to Nationwide's business operations and minimize the transportation, lodging and meal expenses for its witnesses if this case were transferred to the Southern District of Ohio. (Wiencek Decl. ¶ 12).

III. THE MOTION TO TRANSFER SHOULD BE GRANTED.

A. Plaintiff's Could Have Filed This Action In The Southern District Of Ohio, Thus Satisfying The First Prong Of A Motion To Transfer Venue.

Under the transfer of venue statute, (1) "a district court may transfer any civil action to any other district or division where it might have been brought" for the (2) "convenience of parties and witnesses," and "in the interest of justice." 28 U.S.C. § 1404(a). Congress enacted this provision as a "federal housekeeping measure, allowing easy change of venue within a unified federal system." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254, 102 S.Ct. 252, 265 (1981). Its purpose is "to prevent the waste of time, energy and money, and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964).

With respect to the first prong, transfer of this case is appropriate because both proper venue and personal jurisdiction exist in the Southern District of Ohio. Actions can be transferred under Section 1404(a) only to jurisdictions in which the action could have been brought. 28 U.S.C. § 1404(a). Venue is proper in a judicial district in which any defendant resides, and a corporate defendant like Nationwide "resides" in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. 28 U.S.C. § 1391(c). Thus, this action against Nationwide certainly could have been brought in the Southern District of Ohio, where it maintains its corporate headquarters and where it is subject to personal jurisdiction.

B. This Action Should Be Transferred To The Southern District Of Ohio Because Of The Convenience Of The Parties And Witnesses And The Interests Of Justice.

The decision to transfer a case is within the sound discretion of the district court judge on a “case-by-case consideration of convenience and fairness.” *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29, 108 S.Ct. 2239, 2244 (1988). In this District, the relevant factors to determine whether a transfer would be for the convenience of the parties and witnesses, and “in the interests of justice,” include the following:

(1) plaintiff’s choice of forum; (2) convenience of the parties and witnesses; (3) ease of access to the evidence; (4) familiarity of each forum with the applicable law; (5) any local interest in the controversy; and (6) the relative court congestion and time of trial in each forum.

Williams v. Bowman, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001).⁴ As discussed below, a transfer to the Southern District of Ohio satisfies all of these factors.

1. The Court Should Give Little Weight To Plaintiffs’ Choice Of Forum In Balancing The Factors Affecting Whether A Transfer Of Venue Is Warranted.

In a transfer analysis, courts generally give great weight to the plaintiff’s choice of forum. However, the weight given to a plaintiff’s choice of forum is “substantially attenuated” where the plaintiff has commenced the action in a forum that is *not* his or her residence. In such cases, a plaintiff’s choice of forum is given much less weight in ruling on a discretionary transfer motion. *See, e.g., New Image, Inc. v. Travelers Indem. Co.*, 536 F. Supp. 58, 59 (E.D. Pa. 1981); *Bryant v. ITT Corp.*, 48 F. Supp. 2d 829, 832 (N.D. Ill. 1999). Yet, in the present action, one of the plaintiffs is a citizen of Arkansas, and has had no connection with California during the relevant timeframe of this lawsuit. Indeed, a plaintiff’s chosen forum will be accorded little deference where it is apparent that plaintiff is engaged in “forum-shopping” and is offered an equally convenient forum elsewhere. *See Reiffin*, 104 F. Supp. 2d at 54, n. 12. Since Plaintiff Wamock, and most of the putative class members would be closer to the Southern District of Ohio, rather than the Northern District of California, Plaintiffs’ forum shopping should not be rewarded.

⁴ The *Williams* court also listed as a factor the “feasibility of consolidation with other claims.” *Williams*, 157 F. Supp. 2d at 1106. Nationwide is unaware of any similar claims against it pending in the Southern District of Ohio, or elsewhere and, for this reason, this factor is not analyzed.

Moreover, when a plaintiff purports to represent a nationwide class, the named plaintiff's choice of forum is given less weight. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987); *Alexander v. Franklin Resources, Inc.*, 2007 WL 518859, *3 (N.D. Cal. Feb. 14, 2007). Indeed, as the United States Supreme Court has noted, "[w]here there are hundreds of potential plaintiffs, 'all of whom could with equal show of right, go into their many home courts, the claim of any one plaintiff that a forum is appropriate merely because it is his home forum is considerably weakened.'" *Hoefer v. U.S. Dept. of Commerce*, 2000 WL 890862, *2 (N.D. Cal. June 28, 2000) (quoting *Koster v. American Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 524 [1947]).

In the instant case, there are 355 potential Plaintiffs from around the country. (Wiencek Decl. ¶ 4). Only 10% of them worked in California (*id.*), and it is doubtful that the Northern District of California is the home forum for all these California residents. Accordingly, this is just the sort of nationwide action in which the Plaintiffs' choice of forum is not entitled to significant weight in the Court's transfer analysis.

2. Transferring This Action to the Southern District Of Ohio Will Serve the Convenience of the Parties and Witnesses.

Unlike the Plaintiffs' choice forum, a factor that is entitled to great weight in this Court's transfer analysis is the convenience of the parties and witnesses. *Williams*, 157 F. Supp. 2d at 1106. This factor weighs heavily in favor of granting Nationwide's transfer motion.

a. The Southern District Ohio Is A More Convenient Forum For Nationwide And Its Witnesses.

As stated above, Nationwide's corporate headquarters along with its key witnesses, and relevant documents are, in large part, located in Columbus. (Wiencek Decl. ¶¶ 3, 5-9). Trial in San Francisco would be extremely costly for Nationwide because it would have to pay the transportation, meal, and lodging costs for its witnesses and suffer disruption of its business operations while its key employees are away from their jobs. (Week Decl. ¶ 12). These expenses and the disruption to Nationwide's business would be dramatically reduced if trial were conducted in Columbus. (Wiencek Decl. ¶ 13). These facts render the Southern District of Ohio a much more convenient forum for Nationwide, and this District has found, in a case with similar facts, that this supports transferring venue. See *Evancho v. Sanofi-Aventis U.S., Inc.*, 2007 WL 1302985, *3-4

(N.D. Cal. May 3, 2007) (discussing, with reference to cases from outside this District, transferring cases to the forum in which a party has its principal place of business).

Not only is the Southern District of Ohio more convenient for Nationwide, it is also more convenient for its witnesses. Section 1404(a) prefers a venue when the burden on witnesses will be clearly reduced. *In re Funeral Consumers Antitrust Litigation*, 2005 WL 2334362, *4 (N.D. Cal. Sept. 23, 2005). This Court has described the burden on witnesses – particularly those who have to travel in order to testify at trial – as follows:

As for the willing, the convenience-of-witnesses factor looms large. These individuals must take time out of their work and private time to travel and from the place of trial, to live away from home and to wait around windowless corridors on call to testify. Back home, they have children to get to school, elderly parents to care for, jobs to do and lives to lead – all of which must be managed somehow or put on hold. Although lawyers tend to underestimate this burden, it is genuine, all the more so in a distant city. Even where a witness is an employee of a party and will be paid, the disruption is still a hard fact. The expenses of housing and meals, even if borne by a party, are nonetheless authentic outlays.

In re Funeral Consumers Antitrust Litigation, 2005 WL 2334362 at *4.

These are the precise issues that Nationwide's witnesses will face if this case remains in this District. They will have to travel, in most cases, for a full work day or more in each direction to get to San Francisco. Once in San Francisco, they will obviously also have to stay in hotels and wait around the courtroom for their turn to testify. All the while, they will be unable to fulfill their obligations at home and at work. However, if this case were tried in Columbus, most of Nationwide's witnesses could be in the courtroom with as little as a couple hours notice because they live and work in Columbus. This would substantially reduce the disruption to the witnesses' personal lives and work. Thus, as in *In re Funeral Consumers Antitrust Litigation*, the convenience of witnesses in this case favors transfer.

b. The Southern District Of Ohio Appears To Be More Convenient For The Putative Plaintiffs And Their Likely Witnesses.

The geographic location of where Nationwide employed Special Investigators points to the Southern District of Ohio as the much more convenient forum for the vast majority of the putative class members. Of the two named Plaintiffs in the instant case, only Foster is a California

resident. (Complaint ¶ 5). During the past four years, Nationwide has employed only 36, or a mere ten percent, of its Special Investigators in California. (Wiencek Decl. ¶ 4). On the other hand, **two hundred seventy, or seventy-six percent**, of the Special Investigators worked in the Eastern half of the country. (*Id.*) In similar circumstances – where the majority of the putative class worked for the company outside this District – courts in this District have granted motions to transfer venue. See *Evancho*, 2007 WL 1302985 at *3 (transferring venue of a wage and hour case to the Eastern District of New Jersey, in part, because “a greater number of putative class members lives and works on the east coast rather than on the west coast”); *Williams v. Sears Roebuck & Co.*, 1998 WL 61307, *2 (N.D. Cal. Jan. 29, 1998) (concluding that any inconvenience experienced by the West Coast plaintiffs and their witnesses due to transferring the nationwide class action to the Northern District of Illinois would be overcome by the convenience of a closer forum for the East Coast plaintiffs and their witnesses).

Moreover, Nationwide employed 106 Special Investigators in Ohio, the states bordering Ohio (Indiana, Pennsylvania, Michigan, Kentucky and West Virginia) and New York. (Wiencek Decl. ¶ 4). Anyone of these 106 could likely drive to Columbus for a trial in a shorter time than a plane ride to San Francisco. See *In re Funeral Consumers Antitrust Litigation*, 2005 WL 2334362 at *4 (finding that reduced travel time for defendant and most of the plaintiffs supports transfer of venue).

3. Ease Of Access To Sources of Proof Favors Transfer.

Another factor that favors transferring this case to the Southern District of Ohio is the ease of access to sources of proof in that District as opposed to this one. Where, as here, “the location of the evidence is supported by other factors in favor of transfer, the relative ease of access to proof is an important factor to be considered in deciding whether to grant a motion to transfer under section 1404.” *Jarvis v. Marietta Corp.*, 1999 WL 638231, *5 (N.D. Cal. Aug. 12, 1999).

With Nationwide’s corporate headquarters in Columbus, Ohio, its general human resources policies and practices, pay policies and practices, documents related to the duties and responsibilities of Special Investigators (such as their job descriptions and training materials), policies that Special Investigators are charged with enforcing, and documents supporting Special

Investigators' exempt status were generated in Ohio and are maintained at Nationwide's corporate headquarters. (Wiencek Decl. ¶¶ 3, 5, 7). Payroll records are processed and kept at Nationwide's corporate office, and employee pay is prepared and distributed from there as well. (Wiencek Decl. ¶ 6). Furthermore, most of the Nationwide witnesses who can testify about these matters are likewise located in Columbus. (Wiencek Decl. ¶ 9). Conversely, it is doubtful that there is any bulk of evidence located in this District, given that the putative Plaintiffs are scattered throughout the country and are concentrated in the Eastern United States. *See Evancho*, 2007 WL 1302985 at *4 (granting a motion to transfer venue in a wage and hour suit to the location of the defendant's corporate headquarters, in part, because the "policies and practices of defendants that underlie this action originated largely at defendant's headquarters in New Jersey"); *Stewart v. AT&T, Inc.*, 2007 WL 1031263, *3 (N.D. Cal. April 3, 2007) (transferring nationwide ERISA class action to San Antonio, in part, because the plan was designed, amended, and administered from the Defendant's headquarters in San Antonio and most of the employees responsible for the plan's fiduciary functions and amendments work and reside in Texas).

4. The Southern District Of Ohio Is Familiar With Wage And Hour Law.

In this case, Plaintiffs claim that Nationwide improperly classified Special Investigators as exempt from the overtime requirements of the FLSA, and therefore, unlawfully failed to pay them overtime for hours worked in excess of forty per week. (Complaint ¶¶ 2, 11-16). Judges in the Southern District of Ohio are undoubtedly as competent as those in this District to apply federal wage and hour law.

Plaintiffs' additional claims that Special Investigators in California "were misclassified as exempt, and therefore denied overtime [and] meal and rest period compensation as required by stated wage and hour laws within the State of California" do not render this a "California case" that is best decided by a California court. While it is true that a California court may be more familiar with California wage and hour law, this is first and foremost a nationwide collective action under the FLSA. Where, as here, the main federal claim is better resolved in the transferee district, pendency of supplemental state law claims should not override that. *In re Funeral Consumers Antitrust Litigation*, 2005 WL 2334362 at *6; *see also Hoefer*, 2000 WL 890862 at *3 (concluding

1 that the presence of a supplemental state law claim does not weigh against transferring the case to
2 another district). Indeed, as one judge in this District astutely noted, if the supplemental state law
3 claims could anchor a case to this District even when the main federal claim would better be
4 adjudicated elsewhere, it would be a case of the “tail wagging the dog.” *In re Funeral Consumers*
5 *Antitrust Litigation*, 2005 WL 2334362 at *6.

6 In any event, whether Nationwide is liable under either the FLSA or the California
7 wage and hour laws depends on whether it correctly classified Special Investigators as exempt.
8 Nationwide contends, *inter alia*, that its Special Investigators are exempt from overtime
9 requirements based on the administrative exemption under both the FLSA and California law. In
10 this respect, the analysis of the administrative exemption under the FLSA is nearly identical to the
11 analysis required under California law. For instance, California Wage Order No. 4-2001, which
12 covers Nationwide’s Special Investigators, specifically provides that “activities constituting exempt
13 and non-exempt work [under the administrative exemption] shall be construed in the same manner as
14 such terms are construed . . . under the Fair Labor Standards Act” with respect to the types of
15 administrative employees, the categories of work, and discretion and independent judgment. *See*
16 8 Cal. Code Reg. § 11040, ¶ 1(A)(2)(f); 29 C.F.R. §§ 541.201-205, 541.207-208, 541.210,
17 541.215.

18 Furthermore, the California Division of Labor Standards Enforcement (“DLSE”), the
19 state agency empowered to enforce California’s labor laws, has opined that, despite certain
20 differences between state and federal law, it “has traditionally followed federal cases and federal
21 regulations, to the extent that such cases and regulations are not inconsistent with state wage and
22 hour provisions, in interpreting and enforcing the various IWC wage orders,” and that it “adopts” the
23 definitions of the administrative exemption under the FLSA. *See* DLSE Opinion Letter 1998.10.5;
24 DLSE Opinion Letter 1993.1.7 (Rahm Decl., Exh. K). Finally, the California Court of Appeal has
25 expressly held that “federal authorities are relevant to interpretation of the term ‘administrative
26 capacity’ [under California law].” *Bell v. Farmers Insurance Exchange*, 87 Cal. App. 4th 805, 816
27 (2001). *See also Bothell v. Phase Metrics, Inc.*, 299 F. 3d 1120, 1129 (9th Cir. 2002) (noting the
28 incorporation of “FLSA analysis” into the interpretation of California Wage Orders).

1 Thus, while Nationwide anticipates that Plaintiffs will try to portray California wage
2 and hour law as a puzzle that can be solved only by California courts, the similarities between
3 federal and state wage and hour law confirm that this is untrue. Accordingly, the existence of
4 California claims in this case does not substantially weigh against transferring this case to the
5 Southern District of Ohio.

6 **5. The Southern District of Ohio Has A Less Crowded Docket.**

7 The respective case loads of this District and the Southern District of Ohio is another
8 reason that this Court should grant Nationwide's motion and transfer this case. Statistical reports
9 available on uscourts.gov show that in 2006, this District had 8,683 cases pending before fourteen
10 judges, with an average of 620 cases per judgeship. (Judicial Caseload Profile for the Northern
11 District of California, Rahm Decl., Exh. I). The Southern District of Ohio, on the other hand, had
12 3,422 cases pending before eight judges, with an average of 428 cases per judgeship. (Judicial
13 Caseload Profile for the Southern District of Ohio, Rahm Decl., Exh. J). Transferring this case to the
14 Southern District of Ohio could ease the burden on this Court and may result in a speedier resolution
15 or this matter in Ohio.

16 **6. This District Does Not Have A Greater Local Interest In This**
17 **Controversy.**

18 Plaintiffs are likely to claim that this District somehow has a greater local interest in
19 this controversy than the Southern District of Ohio and that this weighs against transfer. However,
20 such an argument would be ineffective given that only one named Plaintiff resides in this District
21 and only thirty-six putative California Plaintiffs exist. (Complaint ¶ 6; Wiencek Decl. ¶ 4). The fact
22 that this case includes California wage and hour claims does not confirm, as Plaintiffs might suggest,
23 that this court has a greater local interest in this case. Rather, it merely suggests that Plaintiffs have
24 selectively chosen to bring only California wage and hour claims, and not claims from other states in
25 which Nationwide employs Special Investigators, in an effort to tie this case to this District. Indeed,
26 Arkansas, where Plaintiff Wamock worked for Nationwide, has its own overtime law, which
27 requires employers to pay non-exempt employees one-and-a-half times their regular rate for all
28

1 hours over forty per week. Ark. Stat. § 11-4-211. Plaintiffs failed to pursue this claim, sacrificing it
 2 for California claims in an apparent effort to cast this District as the most appropriate venue for this
 3 action.

4 The Southern District of Ohio is the clear epicenter for this case. The Plaintiffs point
 5 their fingers at policies and practices that emanated out of Nationwide's corporate headquarters in
 6 Columbus, Ohio. The key witnesses who can testify about these policies are in, or are closer to,
 7 Columbus than to California. The key documents are primarily located in Columbus. More than
 8 twice the number of Special Investigators worked in Ohio or states bordering Ohio than did in
 9 California. The Southern District of Ohio clearly has a greater local interest in this controversy than
 10 this Court.

11 **IV. CONCLUSION**

12 Based on the foregoing, weighing the relevant factors in a Section 1404(a) transfer
 13 analysis, the balance clearly favors transfer of this case to the Southern District of Ohio, Eastern
 14 Division, where Nationwide is headquartered, where the bulk of documentary evidence is located,
 15 where numerous key witnesses reside, where it is most convenient for the parties (including the
 16 majority of putative Plaintiffs), and where the court has a lighter case load. Accordingly, the Court
 17 should grant Nationwide's motion and transfer this action to the Southern District of Ohio, Eastern
 18 Division.

19
 20 Dated: October 16, 2007

Respectfully submitted,

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